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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/531,162
Filing Date: April 12, 2005
Appellant(s): ZATLOUKAL ET AL.

Jo Ann Schmidt
(Registration # 62,255)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/04/2010 appealing from the Office action mailed 03/17/2010.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected and pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7,272,232

Donaldson et al.

09-2007

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Donaldson et al. (US Patent 7,272,232 B1) hereinafter Donaldson.

Claim 1

Donaldson teaches in a mobile client device, a method of operation comprising
(Column 2 lines 27-28, “Thus, a need exists for a method of prioritizing and balancing simultaneous audio outputs in a handheld device”):

first providing, by the mobile client device, a first audio signal at a first audio volume level to a user, the first audio volume level being selectable by the user

(Column 5 lines 5-10, “FIG. 2 shows a system embodiment of the invention involving two sources, audio source A 200 and audio source B 201”);

determining by the mobile client device, the first audio volume level at which the mobile first audio signal is being provided to the user by the mobile client device
(Column 5 lines 31-34, “Referring again to FIG. 2, a priority logic unit 202 is coupled to audio source A 200 and audio source B 201. At a minimum, the priority logic unit 202 is capable of sensing the amplitude and/or presence of each audio source”);

while providing said first audio signal to the user at the first audio volume level, providing, by the mobile client device, to the user a second audio signal at a second audio volume level, the second audio volume level being variable controlled by the mobile client device based on said first audio volume level (**Column 5 lines 37-44, “The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the amount of gain or attenuation that is applied to audio source B 201 by variable attenuator/amplifier 204”**), the second audio volume level being non-intrusively lower than the first audio volume level initially (**Column 5 lines 45-46, “There are many possible prioritization rules that can be used to prioritize the two audio sources” and Column 6 lines 12-16, “For example, if source A is a high priority source (e.g. a telephone ring or other alert tone) and source B is a lower priority source (e.g. a music program) then the sound management system may lower the volume on source B, combine with source A and output the result”**); and

while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level (**Column 2 lines 58-62, “Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is**

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adjusted such that a new signal ratio is established between the two sources”)₁

said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment (**Column 5 lines 50-54, “For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources. the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources. Alternatively, prioritization between a signal event and a continuous source may be dependent upon the presence of a continuous source, regardless of the immediate sound level”**).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses them individually.

(A) Appellant Argues:

"Therefore, claim 1 requires that, while the first and second signals are being provided, the second signal is incrementally increased at least twice. Donaldson does not disclose the features of claim 1" (Appeal brief page 8 2nd paragraph).

"1. Donaldson does not disclose "while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non- intrusive lower volume level to a discernable volume level higher than the first audio volume level "" (Appeal brief page 9 last paragraph).

"2. Donaldson does not disclose "said incrementally increasing further comprising: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment."" (Appeal brief page 11 4th paragraph).

In Response:

The examiner respectfully disagrees.

In regards to the determining that the user has not responded to the second audio signal, Donaldson teaches in Column 5 lines 50-54, "For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources, the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources. Alternatively, prioritization between a signal event and a continuous source may be dependent upon the presence of a continuous source, regardless of the immediate sound level". The examiner asserts that the presence of a source constitutes a determination of the users response to the audio signal, as once a user responds to the signal it will become inactive, for example in Col 6 lines 35-38 Donaldson teaches "In response to audio source B becoming active, the system causes Mixer input B to be reduced to an attenuated level A.sub.A. A time T.sub.2 audio source B becomes inactive and Mixer input A is restored to it previous level A.sub.I". Furthermore, the above disclosure in Column 5 lines 50-54 recites "the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources".

In response to the first and second predetermined increments, the examiner would like to draw attention to the specific language of claim a which reads "*first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third,*

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increasing the second audio volume level by a second predetermined increment” (See claim 1). Although it appears the appellant is arguing that the second predetermined increment happens in response to the determination that the user has not responded, there is no support for such in the claim language. The claim language limits the increasing by a second predetermined increment to occur after the determining, not in response to. Therefore, since the claim language does not specify what the first or second predetermined increments are in response to, the examiner asserts that the example in column 2 lines 52-62 as cited above teaches such limitations as the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established (Column 2 lines 58-62). Establishing a new signal ratio is not limited to a single occurrence as the amplitude may change multiple times, and as long as the 2 sources are still present (which constitutes the determining) the signal ratio will either be maintained or a new signal ratio will be established in response to the change of amplitude. The examiner concludes that the above teaching of a new signal ratio can be properly applied to both the first and second predetermined increments, wherein the second predetermined increment occurs after the determining that the user has not responded to the second audio signal (since both audio signals are still present).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Farhad Ali/

Examiner, Art Unit 2478

/Jeffrey Pwu/

Supervisory Patent Examiner, Art Unit 2478

Conferees:

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